SINGLE BENCH

C/C-100L (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(C.G.)

WRIT PETITION NO. 2920/2005

PETITIONER : Ram Kumar Patel, S/o. Yadram Patel, Aged about 32 years, Secretary-Gram Panchayat Kharwani Bade, Tahsil – Sarangarh, District – Raigarh (C.G.).

VERSUS

RESPONDENTS

1. State of C.G. Through Secretary, Panchayat and Social Welfare, D.K.S. Bhawan, Raipur (C.G.)
2. The Director, Panchayat and Social Welfare. D.K.S. Bhawan, Raipur (C.G.)
3. The Deputy Director, Panchayat and Social Welfare Raigarh, District – Raigarh (C.G.).
4. The Chief Executive Officer, Janpad Panchayat Sarangarh, District-Raigarh (C.G.)
5. Sarpanch, Gram Panchayat Kharwani Bade, Tah. Sarangarh, District – Raigarh (C.G.)
6. Gram Panchayat Kharwani Bade, Through its Saranch, Tah. Sarangarh, District – Raigarh (C.G.)
7. Firtu Ram Bareth, Sahayak Gram Panchayat Adhikari, Janpad Panchayat Sarangarh, District – Raigarh (C.G.)

P.R. No. 3073/05
Presented by Shri Sushil Sahu
dated 5/7/05

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(89)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.2920 OF 2005

Petitioner : Ram Kumar Patel

Versus

Respondents : State of C.G. and others

Present : Mr. Rajeev Shrivastava with Mr. Indrasen Sahu, counsel for the petitioner.
Mrs. Anju Ahuja, Deputy Government Advocate for the State/respondents No.1 to 3.
Mr. S.N.Nande, counsel for respondents No.5 and 6.
None appears for respondents No.4 and 7.

ORDER
(Passed on 16th Day of January, 2007)

By this petition, the petitioner challenges validity of the order dated 20-4-2005 (Annexure P-2), whereby the petitioner was removed from the post of Panchayat Karmi by a resolution passed by Gram Sabha in its meeting held on 18-4-2005.

2. The indisputable facts, in nutshell, are that the petitioner was posted as Panchayat Karmi in Gram Panchayat Kharwani Bade, Tahsil Sarangarh, District Raigarh. The services of the petitioner was removed by order dated 20-4-2005 (Annexure P-2) without following proper procedure of law as prescribed in Rule 7 of the Madhya

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Pradesh/Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (henceforth 'the Appeal Rules, 1999').

3. Mr. Rajeev Shrivastava with Mr. Indrasen Sahu, learned counsel appearing for the petitioner, would submit that the impugned order dated 20-4-2005 (Annexure P-2) is bad and vitiated on the ground that the order comes within the purview of major penalty in accordance with Rule 5 of the Appeal Rules, 1999 and no major penalty can be imposed without affording proper opportunity of hearing to the petitioner in accordance with the provisions of Rule 7 of the Appeal Rules, 1999.

4. *Per contra*, Mr. S.N.Nande, learned counsel appearing for respondents No.5 and 6, would submit that the Appeal Rules, 1999 are not applicable to the services of the petitioner as Panchayat Karmi. Since the petitioner was appointed as Mansevi, the Appeal Rules, 1999 are not applicable. Learned counsel would further submit that the Madhya Pradesh/Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 (henceforth 'the Recruitment Rules, 1999') are not applicable to the posts which are made on part-time basis and are on contract basis and the petitioner's appointment was on part-time basis. Learned counsel would further submit that alternative remedy is available to the petitioner before coming to this Court and as such, this petition be dismissed.

5. Having heard learned counsel appearing for the parties and having perused the pleadings and the records appended thereto, it is evident that the services of the petitioner was removed by the

impugned order dated 20-4-2005 (Annexure P-2) without complying with the statutory provisions of Rule 7 of the Appeal Rules, 1999.

6. With regard to service of notice, it is admitted by learned counsel appearing for respondents No.1 to 3 and respondents No.5 and 6 that no formal enquiry by framing definite charges on the basis of allegations has been initiated and the petitioner was not served with a charge-sheet as contemplated under Rule 7 of the Appeal Rules, 1999. The petitioner was served with a notice prior to 18-4-2005, when the Gram Sabha held its meeting and resolved to remove the petitioner from the post of Panchayat Karmi.

7. With regard to applicability of the Recruitment Rules, 1999, on perusal of Rule 2 of the Recruitment Rules, 1999, it is apparent that the Recruitment Rules, 1999 are applicable to all the posts of Zila Panchayat and Janpad Panchayat, but not to the posts of Gram Panchayat. The case in hand is a case of Gram Panchayat. The Appeal Rules, 1999, which provide that the rules would be applicable to all persons employed in connection with the affairs of Zila Panchayat, Janpad Panchayat and Gram Panchayat discharging the functions of Zila Panchayat, Janpad Panchayat, Gram Panchayat. Rule 2(f) of the Appeal Rules, 1999 defines "Member of Panchayat Service" or a "Panchayat Servant" means any person appointed to the Panchayat Service and includes an officer or servant allocated to the Panchayat Service. The Appeal Rules, 1999 do not distinguish between the part-time Panchayat Karmi or full-time Panchayat Karmi for application of the Appeal Rules, 1999.

8. Learned counsel appearing for the parties would further submit that this case is squarely covered by the decision of this Court dated 14-11-2006 passed in ***Jeet Ram Kurre*** **vs.** ***State of Chhattisgarh and others*** (Writ Petition No.2106 of 2005) and in ***Dhaluram Kosaria*** **vs.** ***State of C.G. and others***[1].

9. Having considered all the aspects of the matter, admittedly, this case is covered by the decision of this Court as above-mentioned.

10. For the reasons and the discussions made hereinabove and the dicta laid down by this Court in aforestated cases, the order of termination dated 20-4-2005 (Annexure P-2) is bad and is quashed.

11. On the question of back wages, no foundation has been laid to establish the fact that whether the petitioner was gainfully employed elsewhere or not during this period. Even otherwise, keeping in view that the termination order has been vitiated not on merit, but, on account of non-compliance of the statutory provisions before terminating the services of the petitioner, 30% back wages would be sufficient in the interest of justice.

12. The writ petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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